

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04CV11023 RCL

LEON ROBINSON,
Plaintiff

v.

THOMAS MENINO, PAUL F.
EVANS, JAMES WYSE,
MICHAEL PRIMM, JOHN A.
MARTEL, WAYNE ROCK,
GARRETT MITCHELL,
CHARLES HARDY, AMERICAN
BROADCASTING CO., INC.,
HEARST-ARGYLE STATION
INC., WCVB TV (Channel 5,
Boston) DENNIS MCCARTHY
AND JOHN DOE I,
Defendants

(Memorandum Incorporated).

**SUPPLEMENTAL MOTION TO PLAINTIFF'S OPPOSITION
TO THE DEFENDANT'S MOTION TO DISMISS THE COMPLAINT**

Now Comes plaintiff Leon Robinson who respectfully moves this Honorable Court to find All of the Defendant(S), in this Civil case in violation of Mr. Robinson's Rights, as his property was seized from his apartment located at 27 Spring Street in West Roxbury, MA pursuant to Article XIV of the Massachusetts Declaration of Rights and the Fourth Amendment to the United States Constitution. Plaintiff also seek a copy of A "videotape" used by the ABC, News and by the Boston Police during the taping of the crime scene, and during the search to record the contents of his apartment.

As grounds for this supplemental motion, plaintiff states the following:

1. The search of Mr. Robinson's apartment was unconstitution-
nal and in violation of M.G.L. c. 276. Sec. 1 et seq. and Article

XIV of the Massachusetts Declaration of Rights, and the Civil Rights violation 42 U.S.C. § 1983, because:

(A) The Boston Police and ABC News members conducted a warrantless search of Mr. Robinson's apartment on February 21, 2001. Although the police obtained approval from the Judge in the early morning hours (approximately 3:15 a.m.) of February 22, 2001, plaintiff avers on information and belief that the police actually entered his apartment and began searching, and possibly videotaping, shortly after Mr. Robinson's arrest on February 21, 2001 at approximately 10:30 p.m. See Warrant and compare to Affidavit of Leon Robinson attached hereto respectively as Exhibit 1,

(B) The entry, search and possible videotaping of the apartment was clearly performed in violation of the warrant clause as Mr. Robinson was under arrest at the time, did not give any permission for them to enter and there were no exigent circumstances in existence at that time, which would have permitted a warrantless entry and search. See Article XIV and the Fourth Amendment to the United States Constitution.

Furthermore, the search was not incident to his arrest given that Mr. Robinson voluntarily turned himself in near a convenience store around the corner from his apartment building.

See Commonwealth v. Nova, 50 Mass. App. Ct. 633, 635 (2000) See Arrest Report attached as Exhibit 2.

Article 14 provides:

"Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his house , his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest. or and seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the law."

(C) It is the burden of the Defendant(S) °to demonstrate that its warrantless search and seizure was lawful and fell within a permissible exception to the warrant clause. Commonwealth v. Barry, 420 Mass. 95, 105-106 (1995) The °Defendant(S) cannot satisfy that burden in this civil action case.

(2) If the police and ABC News, 24/7 videotaped the plaintiff apartment during or before the search, then the video tape must be provided to the Plaintiff, Leon Robinson, for examination, and if the crime scene as well had been videotaped during or before the search it also needs to be examined, and, ultimately, allow the Plaintiff Leon Robinson's Civil Action Complaint move forward to trial pursuant to the fruit of the poisonous tree doctrine.

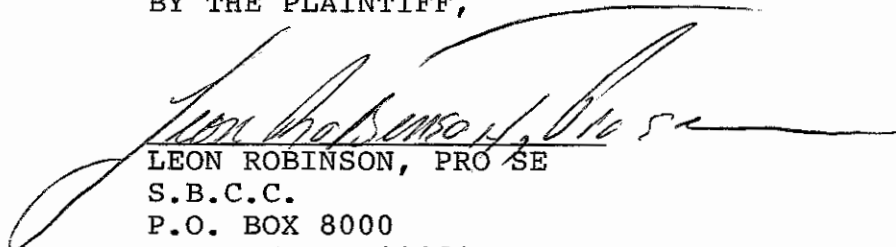
(3)

As these statements were obtained unconstitutionally, they must excised from the Affidavit submitted in support of the warrant pursuant to the fruit of the poisonous tree doctrine. See Wong Sun v. United States, 371 U.S. 471 (1964)

Wherefore, Plaintiff, Leon Robinson, moves this Honorable Court to allow this case move forward to trial and to find that All of the Defendant(S) in violation of the plaintiff's Rights, and to return all Property, Videotapes, House Key(S), Personal Papers seized during the search of 27 Spring Street, Apt# 53 in West Roxbury for the forgoing reasons. Plaintiff also moves this Honorable Court with all respect for an evidentiary hearing.

PLAINTIFF RESPECTFULLY REQUEST AN ORAL ARGUMENT FOR THIS MOTION

Respectfully Submitted,
BY THE PLAINTIFF,


LEON ROBINSON, PRO SE
S.B.C.C.
P.O. BOX 8000
SHIRLEY, MA 01464

1

EXHIBIT
1.

AFFIDAVIT OF THE PLAINTIFF LEON ROBINSON

I, Leon Robinson, do state and depose that:

1. My true name is Leon Robinson and I am presently incarcerated in Souza Baranowski Prison in Shirley, MA. I live at 27 Spring Street, Apt. 53, West Roxbury, MA when the Boston Police searched it pursuant to a un-signed warrant in this case in February 2001. I had an expectation of privacy in this apartment at all relevant times described in the warrant and attached affidavits for the search conducted on my apartment.

2. On February 21, 2001, I turned my self in to the Boston Police and I was arrested, as I had met with them at a store on the street in West Roxbury. They told me that I was under arrest for the shooting of Ricardo Robinson.

3. They placed me in cuffs and brought me to the police station. At some point I was booked and processed.

4. More then an houn after arriving at the station, the detectives asked me if I wanted to say anything. As they told me that I could help myself if I spoke with them, I agreed to give a statement. I would have like to call a family member or lawyer but did not understand that I could use their telephones to do so. While I knew that I had a right to a lawyer, I thought Would have to wait until I got to court the next day. I was feeling pressured to speak given that I was alone and did not understand that I could call someone to discuss my options.

5. At no time prior to giving this statement, did the Boston Police inform me that I could call a friend, family member or a lawyer.

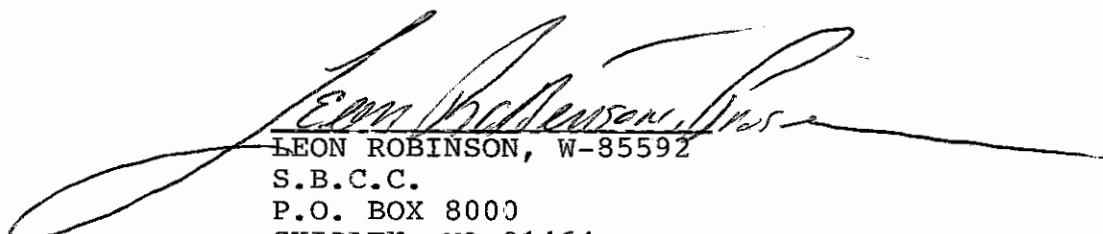
6. I gave the police a statement and then, sometime into my statement, they asked if I could speak with anyone who could verify where I was that night. They then asked me to call that person which I did.

7. Although I was permitted to make this call, I had already spoken to the police at length and believed that I had to continue. If I had known prior to giving this statement that I had a Right to call a lawyer or family member to discuss my options, I would never have spoken to the Boston Police that night.

8. The police took my Keys, and my Jacket after I was arrested without my consent. At this date and time year 2005, the Boston Police still have my House Keys and other items.

Signed under pain and penalties, on this 10th day of September, 2005.

Respectfully Submitted,


LEON ROBINSON, W-85592
S.B.C.C.
P.O. BOX 8000
SHIRLEY, MA 01464

2

Exhibit
2.

5

FEB-22-2001 09:14

BPD HOMICIDE

617 343 5743

P.07/09

Boston Police INCIDENT REPORT

HANDPRINT

ORIGINAL <input type="checkbox"/> SUPPLEMENTARY <input checked="" type="checkbox"/>		01. KEY SITUATIONS <input type="checkbox"/> DRUGS <input type="checkbox"/> LICENSED PREMISES <input type="checkbox"/> ELDERLY <input type="checkbox"/> JUVENILE <input type="checkbox"/> COMMUNITY DISORDERS <input type="checkbox"/> DOMESTIC <input checked="" type="checkbox"/> OTHER		02. COMPLAINT NO. 010-094970		03. REPORT DIST. D-14		CLEARANCE DIST. D-14		PAGE 1 OF 1																																																													
04. TYPE OF INCIDENT Homicide Arrest				05. CRIME CODE		06. STATUS <input type="checkbox"/> INACTIVE <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> ARREST <input type="checkbox"/> UNDER 18 <input type="checkbox"/> EXCEPT CL <input type="checkbox"/> UNDER 18		07. DATE OF OCCUR. 02/21/01		08. 02/21/01																																																													
09. LOCATION OF INCIDENT (NO. STREET) (INTERSECTION-ALPHA ORDER) 1587 Commonwealth Ave. Brighton						09. DISPATCH TIME 16:42		10. TIME OF OCCUR. A 16:30		11. 02/21/01																																																													
11. VICTIM-COMP. (LAST, FIRST, MI) Commonwealth of MA, Boston Police Dept.						12. PHONE 343-4470		13. SEX M		14. RACE																																																													
16. ADDRESS (NO. STREET, CITY AND STATE IF OTHER THAN BOSTON OR MASS.) Homicide Unit, 1 Schroeder Plaza						17. AGE		18. DOB		15. MARITAL STATUS <input type="checkbox"/> MARRIED <input type="checkbox"/> UNMARRIED																																																													
19. PERSON REPORTING (IF DIFFERENT THAN ABOVE) Sgt. Det. James J. Wyse Et-al						20. ADDRESS Homicide Unit		21. PHONE																																																															
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